Regulatory Reforms = Repression

No respite from the Tory attacks on employees' rights. The government continues to propose to add more regulations and legislative acts to the bonfire of workers' rights. As we all know last year in response to calls from the business community the coalition turned its attention to employee's rights at work. Under the disguise of reducing the red tape bureaucracy, that they claim is stifling growth, launching consultations such as resolving workplace disputes and collective redundancy rules. They have also commissioned a number or reports to look at the foundations of employment laws and reduced the Health and Safety Executives budget (as reported in previous articles such as the Medicine is not working Part 2) which in turn left them with no choice other than to introduce substantially weaker reforms to existing regulation designed to protect people whilst at work.

In this article we are going to take a look at some of the proposals contained within the government's proposals in response to the consultation on resolving workplace disputes and the call for evidence on collective redundancies. This will then lead us to take at a look at other pieces of legislation are on the reform horizon, finally concluding with the recent announcement from the Health and Safety Executive regarding the reporting of accidents.

From April 6th 2012, in less than a month the qualification period for unfair dismissal will increase from 1 year to 2 years. The government have finally confirmed the transitional arrangements for the implementation of this increase. Subject to parliamentary approval the increased qualifying period will only apply to employees whose continuous employment begins on or after 6th April. Employees whose period of continuous employment began before then will still be subject to the one year qualifying period; furthermore, the qualifying period for the entitlement to request a written statement of reasons for dismissal will also increase to 2 years on 6th April.

The government believe the increased qualifying period will encourage employers to hire staff thus, creating stimulus for growth whilst at the same time reducing the number of claims that proceed to tribunal, whether or not that is a correct assumption or not remains to be seen but I think a fairly safe assumption is that we are likely to see an increase in the number of claimants alleging discrimination , whistleblowing or other provisions not subject to the qualifying period in order to circumvent the legislations reach.

I think it is also worth noting that new compensation limits were introduced on certain employment tribunal awards effective from the 1st February 2012. The two key changes to be aware of are the limit on compensatory award for "ordinary" unfair dismissal has increased from £68,400 to £72,300 and the maximum amount of a week's pay for the purpose of

Calculating statutory redundancy payments and the basic award in unfair dismissal claims has increased from £400 to £430 applicable to dismissals on or after the 1st February 2012.

The relatively small increases which in theory potentially provide employees with greater compensation (in reality most cases never get anywhere near such limits with the average payout for winning your case for unfair dismissal being just £4,600) should be tempered with the other changes already announced to the tribunal structure in relation to costs.

From April 6th 2012 the maximum amount of a costs order which tribunal can award increases from £10,000 to £20,000 and although costs are very rarely awarded (less than 500 out of 57,000+ cases in 2010) it will undoubtedly be another factor for some claimants to seriously consider before making a decision to pursue their claim, along with the fact that the amount of a deposit order a tribunal can award as a condition of continuing with an employment tribunal claim has been doubled from £500 to £1,000

The government's consultation on the introduction of fees in employment tribunals and employment appeals tribunal closed on the 6th March 2012 and the results are yet to be published but it has been widely rumoured to that the government intend to introduce Fees on a sliding scale depending on the type of claim being lodged with figures such as £250 to lodge a claim and further £1,000 to be paid if the claim is accepted and proceeds to a full hearing being branded about in some government circles, which will be refunded if a claim is successful, but forfeited if a claimant loses the cases. Yet more restrictive barriers being placed in the way of employees seeking to access justice, granted the government has said that "poor claimants" will not have to pay although just what qualifies as a "poor claimant" remains to be seen and remember it was Vince Cable of the Fib Dems who made that statement.

Another aspect of the reforms could see the introduction of fines of up to £5,000 for employers who are found to have breached employments rights payable to the exchequer with a reduction for prompt payment also being introduced.

The reforms also introduce a mandatory requirement for all claims to be submitted to ACAS for conciliation before they are submitted to an employment tribunal, just how effective this reform will be is questionable to say the least and is likely to just add another layer to the dispute process as opposed to providing a real platform for employers and employees to resolve their differences, it is also notable that the government do not intend to provide ACAS with any additional funding or resources in order to carry out what the government believe is a very fundamental and pivotal aspect of their reforms.

The next piece of legislation to appear on the coalitions chopping block is in relation to collective redundancies and although minimum standards surrounding collective

redundancies were introduced on to the UK statute books back in 1975 backed up by European legislation, the government appears hell bent on weakening the provisions further, even though the current provisions place substantially lower obligations on employers than those on our European counterparts. For instance on average it costs approximately £16,000 to make a UK employee redundant compared to around £100,000 in France and Germany. Rather than stimulate growth it is arguable that this measure coupled with the doubling of the qualification period will create a hire and fire culture with employers disregarding employees on a whim at the first sight of a dip in profits, safe in knowledge that there will be no repercussions leaving them free to rehire when the bottom line has improved.

The government closed its consultation call for evidence on collective redundancy consultation rules on 31st January 2012 and has yet to publish the results of the consultation however, the call for evidence focused on four main areas:

- The process of consultation, including the ability to reach agreement and the issue of establishment
- The minimum periods for consultation and notification
- High impact redundancies
- The link with TUPE and insolvency legislation

Remember the leaked Beecroft report last year that downing street tried to dismiss, also discussed in a previous article last November entitled Forget Exploitation, We're now talking about Extinction of Employees' rights altogether well bit by bit it is happening.

To illustrate further consultations are scheduled to take place during the course of 2012 such as

- Changes to compromise agreements with standardised wording
- The introduction of protected conversations, which, they claim would allow employers and employees to initiate conversations about employment issues, such as poor performance or retirement, but the conversations could not be used in evidence in any tribunal claim (this could lead to a complete abuse of this privilege with its overuse i.e. every time the employer speaks to an employee or representative he could say that it is a protected conversation).
- The introduction of compensated no fault dismissals for small employers (10 people or less) (this could also stifle growth with some employers reluctant to employ the 11th person and thus lose their right to dismiss at will)

- The introduction of "Rapid Resolution scheme" to determine simple issues such as holiday pay, with the proposal suggesting the use of an independent legal expert making decisions based on written submissions, however, given the increasing Complexity and conflicting common law issues surrounding holiday accrual and rest periods particularly when sickness is to be taken into account, this may prove somewhat problematic in practice.

It will not come as a surprise to any of you reading this article to learn the government intends to launch consultation on Trade Union Facility time particularly given Francis Maude's comments last year. Despite admitting that "trade unions are an important part of a free society, of Britain's Big society" he still claims that representatives' receive too much support from the taxpayer via time off to carry out their duties. Eric Pickles went a little bit further claiming that all public sectors reps do is raise money for the labour party at a cost of a quarter of a billion pounds a year to the taxpayer by funding full time union reps within the public sector.

Unfortunately for the rather overweight dinosaur community secretary, research carried out by the former DTI in 2007 does not back up his claims and in fact provides evidence to the contrary. It suggested that effective and engaged union representatives save the public purse between £170 million and £400 million a year by improving staff retention, increased training take up, health and safety improvements and dispute resolution; and as much as £3.6 billion a year through general productivity gains.

In addition joint research carried out by the CBI, TUC, and DTI in 2009 which included a number of cases studies stated:

> "Our case studies have very different characteristics. But each demonstrates that when union representatives and managers forge positive working relationships, they can produce innovative solutions which make a tangible difference to the workplace"

I would argue there are a smaller group of people who ply their trade in a big house in Westminster, who are also paid from the public purse that waste billions upon billions of taxpayers' money whilst continuing to ignore the needs of the majority of this great country of ours. Perhaps a referendum on their performance via a general election would assist in removing some of the Tory parasites that are feeding of the misery of the working class masses.

And whilst, at least for the moment, there has been no announcement on potential reforms to other parts of the Trade Union and Labour relations (Consolidation) Act 1992, you do not need to be Einstein to work out that they will be on the Tory's agenda in the not too distant future, especially given Cameron's outcry to Len Mcluskey's interview in the Guardian in which he suggested that the Olympics could be a potential target for disruption if the government continued to force feed the public with deep rooted ideological capitalistic ideas and failing to listen to the genuine concerns of **all** stakeholders.

Despite the biggest employment law reforms for over a decade being dished out under the pretend umbrella of cutting the cost of bureaucratic regulations, that the government claim are burdensome on employers, you only have to look at their proposals to review the agency workers regulations in the next 12 months despite them only being introduced 6 months ago to expose that myth. Let's be clear this nothing more than a class war and provides a clear indication of the path they intend to travel, which if they were left to their own devices would lead right back to the Master and Servant Act of 1823.

Finally, the Health and Safety Executive have confirmed that from the 6th April 2012, the over 3 day injury reporting requirement under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) will change to over 7 days. The changes are the result of last Januarys (2011) consultation which ultimately emerged from Lord Young's *Common Sense, Common Safety Report* on Health and safety in Britain which was published in October 2010.

This is just one of the 40 or so recommendations that were made in the report along with abolishing risk assessments for what Lord Young termed low risk business, again with no clear guidance as to what would be deemed low risk, however, you can be certain that a considerable number of the other recommendations will certainly find their on to the statute books in some form or other.

To conclude, I would not be surprised to see the adverse effects of these changes significantly increase the number of people who are unable to secure work adding to the 2.68 million who currently are not in employment, but perhaps of even more pressing concern relates to the governments ideas that reducing the level of health and safety legislation within the workplace, restricting access to justice by a complete overall of no win no fee legal advice, along with lobbying the other members of the EU in an attempt to reduce the number of Health and Safety legislation that originates from the EU will result in a raising of the standards via business adopting a common sense approach is nothing short of pure fantasy